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9
10 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation and Petition to
Revoke Probation Against:

Case No. 2004-166

13 **JOAN PAULA MCCRACKIN, A.K.A.,**
14 **JOAN PAULA BARNES**
6041 Rio Linda Boulevard, Apt. 3
15 Rio Linda, California 95673

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

16 Registered Nurse License No. 494497

17 Respondent.

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19 **FINDINGS OF FACT**

20 1. On or about September 5, 2007, Complainant Ruth Ann Terry, M.P.H.,
21 R.N. , in her official capacity as the Executive Officer of the Board of Registered Nursing
22 ("Board") of Consumer Affairs, filed Accusation and Petition to Revoke Probation No. 2004-166
23 against Joan Paula McCrackin, also known as Joan Paula Barnes ("Respondent"), before the
24 Director of Consumer Affairs.

25 **Registered Nurse License**

26 2. On or about August 31, 1993, the Board issued Registered Nurse License
27 Number 494497 to Joan Paula McCrackin, also known as Joan Paula Barnes ("Respondent").
28 The registered nurse license expired on December 31, 2006.

1 3. On or about September 24, 2007, Constance A. Ward, an employee of the
2 Department of Justice, served by Certified and First Class Mail a copy of Accusation and Petition
3 to Revoke Probation No. 2004-166, Statement to Respondent, Notice of Defense, Request for
4 Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent at her
5 addresses of record which was and is 6041 Rio Linda Boulevard, Apt. 3, Rio Linda, California
6 95673. A copy of the Accusation and Petition to Revoke Probation, the related documents, and
7 Declaration of Service are attached as **exhibit A**, and are incorporated herein by reference.

8 4. Service of the Accusation and Petition to Revoke Probation was effective
9 as a matter of law under the provisions of Government Code section 124.

10 5. The First Class and Certified Mail pleading packets were sent on
11 September 24, 2007, to Respondent's address at 6041 Rio Linda Boulevard, Apt. 3, Rio Linda,
12 California 95673 and were not returned. The Domestic Return Receipt was signed by
13 Respondent on September 26, 2007. A copy of the Domestic Return Receipt is attached as
14 **exhibit B** and incorporated herein by reference.

15 6. Government Code section 11506 states, in pertinent part:

16 (c) The respondent shall be entitled to a hearing on the merits if the
17 respondent files a notice of defense, and the notice shall be deemed a specific
18 denial of all parts of the accusation not expressly admitted. Failure to file a notice
of defense shall constitute a waiver of respondent's right to a hearing, but the
agency in its discretion may nevertheless grant a hearing.

19 7. Respondent failed to file a timely Notice of Defense (within 15 days after
20 service upon it of the Accusation and Petition to Revoke Probation), or any Notice of Defense
21 and therefore waived her right to a hearing on the merits of Accusation and Petition to Revoke
22 Probation No. 2004-166.

23 8. California Government Code section 11520 states, in pertinent part:

24 (a) If the respondent either fails to file a notice of defense or to appear at
25 the hearing, the agency may take action based upon the respondent's express
admissions or upon other evidence and affidavits may be used as evidence without
any notice to respondent.

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27 9. Pursuant to its authority under Government Code section 11520, the
28 Director finds Respondent is in default. The Director will take action without further hearing

and, based on Respondent's express admissions by way of default and the evidence before it, contained in **exhibits A and B**, finds that the allegations in Accusation and Petition to Revoke Probation No. 2004-166 as to Respondent are true.

10. The total costs for investigation and enforcement of Accusation and Petition to Revoke Probation No. 2004-166 are \$944, as of December 5, 2007. Further, costs in the amount of \$1,525, awarded to the Board pursuant to the Decision in Accusation No. 2004-166, are due and have not been paid by Respondent.

DETERMINATION OF ISSUES

1. Respondent has subjected her Registered Nursing License No. 494497 to discipline.

2. A copy of the Accusation and Petition to Revoke Probation and the related documents and Declaration of Service are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Director of Consumer Affairs is authorized to revoke Respondent's Registered Nurse License No. 494497 based upon violations of Business and Professions Code section 2761, subdivisions (a) and (f) and section 2762, subdivision (a), as alleged in Accusation and Petition to Revoke Probation No. 2004-166.

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1 **ORDER**

2 **IT IS SO ORDERED** that Registered Nurse License No. 494497, heretofore
3 issued to Respondent is revoked.

4 Pursuant to Government Code section 11520, subdivision (c), Respondent may
5 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
6 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
7 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
8 statute.

9 This Decision shall become effective on April 10, 2008.

10 It is so ORDERED MARCH 11, 2008

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12 *LaTrancene W Tate*

13 FOR THE BOARD OF REGISTERED NURSING
14 DEPARTMENT OF CONSUMER AFFAIRS

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24 Attachments:

25 Exhibit A: Accusation No. 2004-166, Related Documents, and Declaration of Service
26 Exhibit B: Copy of Domestic Return Receipt

27 DOJ docket number:03579110SA2007101406
28 McCrackin.Def.wpd

Exhibit A
Accusation No. 2004-166
Related Documents and Declaration of Service

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11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation and Petition to
Revoke Probation Against:

Case No. 2004-166

13 **JOAN PAULA MCCRACKIN, A.K.A.,**

14 **JOAN PAULA BARNES**

6041 Rio Linda Boulevard, Apt. 3

15 Rio Linda, California 95673

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

16 Registered Nurse License No. 494497

17 Respondent.

18
19 Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

20 **PARTIES**

21 1. Complainant brings this Accusation and Petition to Revoke Probation
22 solely in her official capacity as the Executive Officer of the Board of Registered Nursing
23 ("Board") of Consumer Affairs.

24 **Registered Nurse License**

25 2. On or about August 31, 1993, the Board issued Registered Nurse License
26 Number 494497 to Joan Paula McCrackin, also known as Joan Paula Barnes ("Respondent").
27 The registered nurse license expired on December 31, 2006, and has not been renewed.

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1 **Prior Discipline**

2 3. Effective October 17, 2004, pursuant to the Stipulated Settlement and
3 Disciplinary Order in Accusation No. 2004-166, the Board of Registered Nursing revoked
4 Respondent's Registered Nurse License No. 494497. However, the revocation was stayed and
5 Respondent's license was placed on probation for a period of three (3) years with conditions. A
6 copy of the Stipulated Settlement and Disciplinary Order is attached hereto as **Exhibit A** and is
7 incorporated herein by reference.

8 **JURISDICTION**

9 4. Section 2750 of the Business and Professions Code ("Code") provides, in
10 pertinent part, that the Board may discipline any licensee, including a licensee holding a
11 temporary or an inactive license, for any reason provided in Article 3 (commencing with Code
12 section 2750) of the Nursing Practice Act.

13 5. Code section 2764 provides, in pertinent part, that the expiration of a
14 license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
15 against the licensee or to render a decision imposing discipline on the license. Under Code
16 section 2811, subdivision (b), the Board may renew an expired license at any time within eight
17 years after the expiration.

18 6. Code section 118, subdivision (b), provides, in pertinent part, that the
19 expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
20 action during the period within which the license may be renewed, restored, reissued or
21 reinstated.

22 **STATUTORY PROVISIONS**

23 7. Code section 2761 states, in pertinent part:

24 The board may take disciplinary action against a certified or licensed nurse
25 or deny an application for a certificate or license for any of the following:

26 (a) Unprofessional conduct...,

27 (f) Convicted of a felony or of any offense substantially related to the
28 qualifications, functions, and duties of a registered nurse, in which event the
 record of the conviction shall be conclusive evidence thereof.

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8. Code section 2762 states, in pertinent part, as follows:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

COST RECOVERY

9. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

ACCUSATION

10. DRUG

"Marijuana" is a Schedule I controlled substance as designated by Health and Safety Code section 11054, subdivision (d)(13).

FIRST CAUSE FOR DISCIPLINE

11. Respondent has subjected her license to discipline under Code section 2761, subdivision (f), in that on October 11, 2005, in the Superior Court, County of Sacramento, in the matter entitled *People vs. Joan Paula McCrackin* (Super Ct. Sacramento Cty., 2005, Case No. 05M09468), Respondent was convicted by the court on her plea of nolo contendere of violating Health and Safety Code section 11364 (unlawful possession of paraphernalia used for smoking a controlled substance), a misdemeanor.

SECOND CAUSE FOR DISCIPLINE

12. Respondent has subjected her license to discipline under Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (a), in that on or about February 15, 2005, Respondent self administered Marijuana, a controlled substance.

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[illegible]

If Respondent violates the conditions of her probation, the Board after giving the Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed revocation of the Respondent's license, or reimpose probation under the same or additional or other terms and conditions as the Board, in its discretion, determines appropriate under the circumstances.

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1 **SECOND CAUSE TO REVOKE PROBATION**

2 **(Failure to Submit Written Reports)**

3 17. At all times after the effective date of Respondent's probation, Condition 5
4 stated:

5 Respondent, during the period of probation, shall submit or cause to be
6 submitted such written reports/declarations and verifications of actions under
7 penalty of perjury, as required by the Board. These reports/declarations shall
8 contain statements relative to Respondent's compliance with all the terms and
conditions of the Board's Probation Program. Respondent shall immediately
execute all release of information forms as may be required by the Board or its
representatives.

9 18. Respondent's probation is subject to revocation because she failed to
10 comply with Probation Condition 5, referenced above. The facts and circumstances regarding
11 this violation are that Respondent failed to provide the Board with the following information:

12 a. Respondent failed to submit a written report of her arrest within 72 hours
13 of the incident, as required by Probation Condition 1.

14 b. Respondent failed to submit an explanation of the reasons she failed to
15 appear for drug screens on 6/23/2005, 11/29/2005, 5/24/2006, 6/26/2006, 7/31/2006, 8/8/2006,
16 8/21/2006, 9/7/2006, 10/18/2006, 11/8/2006, 12/6/2006, and 12/20/2006, as required by the
17 Board.

18 c. Respondent failed to submit the quarterly report that was due April 7,
19 2007.

20 **THIRD CAUSE TO REVOKE PROBATION**

21 **(Function as a Registered Nurse)**

22 19. At all times after the effective date of Respondent's probation, Condition 6
23 stated:

24 Respondent, during the period of probation, shall engage in the practice of
25 registered nursing in California for a minimum of 24 hours per week for 6
consecutive months or as determined by the Board.

26 For purposes of compliance with the section, "engage in the practice of
27 registered nursing" may include, when approved by the Board, volunteer work as
a registered nurse, or work in any non-direct patient care position that requires
licensure as a registered nurse.

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1 The Board may require that advanced practice nurses engage in advanced
2 practice nursing for a minimum of 24 hours per week for 6 consecutive months or
 as determined by the Board.

3 If Respondent has not complied with this condition during the
4 probationary term, and Respondent has presented sufficient documentation of her
5 good faith efforts to comply with this condition, and if no other conditions have
6 been violated, the Board, in its discretion, may grant an extension of the
 respondent's probation period up to one year without further hearing in order to
 comply with this condition. During the one year extension, all original conditions
 of probation shall apply.

7 20. Respondent's probation is subject to revocation because she failed to
8 comply with Probation Condition 6, referenced above. The facts and circumstances regarding
9 this violation are that Respondent failed to engage in the practice of registered nursing in
10 California for a minimum of 24 hours per week for 6 consecutive months.

11 **FOURTH CAUSE TO REVOKE PROBATION**

12 **(Failure to Complete Course Work)**

13 21. At all times after the effective date of Respondent's probation, Condition
14 10 stated:

15 Respondent, at her own expense, shall enroll and successfully complete a
16 course relevant to the practice of nursing no later than six months prior to the end
 of her probationary term.

17 Respondent shall obtain prior approval from the Board before enrolling in
18 the course. Respondent shall submit to the Board the original transcripts or
19 certificates of completion for the above required course. The Board shall return
20 the original documents to Respondent after photocopying them for its records.
 The Board may, in its discretion, waive this requirement upon presentation of
 evidence of training and education completed by Respondent during the
 probationary period furnished by Respondent's employer.

21 22. Respondent's probation is subject to revocation because she failed to
22 comply with Probation Condition 10, referenced above. The facts and circumstances regarding
23 this violation are that Respondent failed to complete course work by a date not later than 6
24 months prior to the end of her probationary term.

25 **FIFTH CAUSE TO REVOKE PROBATION**

26 **(Failure to Comply with Cost Recovery Requirements)**

27 23. At all times after the effective date of Respondent's probation, Condition
28 11 stated, in pertinent part:

1 Respondent shall pay to the Board costs associated with its investigation
2 and enforcement pursuant to Business and Professions Code section 125.3 in the
3 amount of Two Thousand Sixteen Dollars (\$2,016). Respondent shall be
4 permitted to pay these costs in a payment plan approved by the Board, with
5 payments to be completed no later than three months prior to the end of the
6 probation term.

7 24. Respondent's probation is subject to revocation because she failed to
8 comply with Probation Condition 11, referenced above. The facts and circumstances regarding
9 this violation are that Respondent failed to make timely cost recovery payments to the Board.

10 **SIXTH CAUSE TO REVOKE PROBATION**

11 **(Failure to Abstain from the Use of Psychotropic [Mood-Altering Drugs])**

12 25. At all times after the effective date of Respondent's probation, Condition
13 13, subdivision (B) stated:

14 Respondent shall completely abstain from the possession, injection or
15 consumption by any route of all psychotropic (mood-altering) drugs, including
16 alcohol, except when the same are ordered by a health care professional legally
17 authorized to do so and are part of documented medical treatment. Respondent
18 shall have sent to the Board, in writing and within fourteen (14) days, by the
19 prescribing physician or dentist, a report identifying the medication, dosage, the
20 date the medication was prescribed, Respondent's prognosis, the date the
21 medication will no longer be required, and the effect on the recovery plan, if
22 appropriate.

23 Respondent shall identify for the Board a single physician, nurse
24 practitioner or physician assistant who shall be aware of Respondent's history or
25 substance abuse and will coordinate and monitor any prescriptions for Respondent
26 for dangerous drugs, controlled substances or mood-altering drugs. The
27 coordinating physician, nurse practitioner or physician assistant shall report to the
28 Board on a quarterly basis Respondent's compliance with this condition. If any
substances considered addictive have been prescribed, the report shall identify a
program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse
practitioner or physician assistant to be a specialist in addictive medicine or to
consult with a specialist in addictive medicine.

24 26. Respondent's probation is subject to revocation because she failed to
25 comply with Probation Condition 13, subdivision (B), referenced above. The facts and
26 circumstances regarding this violation are that Respondent failed to completely abstain from the
27 possession and use of controlled substances and alcohol. Respondent tested positive for

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1 Cannabinoids on February 15, 2005, and alcohol on August 2, 2005, August 31, 2005, February
2 16, 2006, and March 9, 2006.

3 **SEVENTH CAUSE TO REVOKE PROBATION**

4 **(Failure to Participate in Random Drug Screenings)**

5 27. At all times after the effective date of Respondent's probation, Condition
6 14 stated:

7 Regardless of whether additional chemical dependency treatment and
8 rehabilitation is recommended by the licensed mental health professional referred
9 to in the Mental Health Examination Term above, Respondent, at her own
10 expense, shall participate in a random, biological fluid testing or a drug screening
11 program which the Board approves. The length of time and frequency will be
12 subject to approval by the Board. Respondent is responsible for keeping the
13 Board informed of Respondent's current telephone number at all times.
14 Respondent shall also ensure that messages may be left at the telephone number
15 when she is not available and ensure that reports are submitted directly by the
16 testing agency to the Board, as directed. Any confirmed positive finding shall be
17 reported immediately to the Board by the program and Respondent shall be
18 considered in violation of probation.

19 In addition, Respondent, at any time during the period of probation, shall
20 fully cooperate with the Board or any of its representatives, and shall, when
21 requested, submit to such tests and samples as the Board or its representatives
22 may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or
23 other controlled substances.

24 If Respondent has a positive drug screen for any substance not legally
25 authorized and not reported to the coordinating physician, nurse practitioner, or
26 physician assistant, and the Board files a petition to revoke probation or an
27 accusation, the Board may suspend Respondent from practice pending the final
28 decision on the petition to revoke probation or the accusation.

29 28. Respondent's probation is subject to revocation because she failed to
30 comply with Probation Condition 14, referenced above. The facts and circumstances regarding
31 this violation are that Respondent failed to respond to requests for random drug screenings on
32 6/23/2005, 11/29/2005, 5/24/2006, 6/26/2006, 7/31/2006, 8/8/2006, 8/21/2006, 9/7/2006,
33 10/18/2006, 11/8/2006, 12/6/2006, and 12/20/2006.

34 **PRAYER**

35 **WHEREFORE**, Complainant requests that a hearing be held on the matters
36 herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:


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1 1. Revoking the probation that was granted by the Board of Registered
2 Nursing in Case No. 2004-166 and imposing the disciplinary order that was stayed thereby
3 revoking Registered Nurse License No. 494497, issued to Joan Paula McCrackin, also known as
4 John Paula Barnes;

5 2. Ordering Joan Paula McCrackin, also known as John Paula Barnes to pay
6 the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this
7 case, pursuant to Code section 125.3; and,

8 3. Taking such other and further action as deemed necessary and proper.

9
10 DATED: 9/5/07

11 
12 RUTH ANN TERRY, M.P.H., R.N.
13 Executive Officer
14 Board of Registered Nursing
15 Department of Consumer Affairs
16 State of California
17 Complainant
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BEFORE THE
BOARD OF REGISTERED NURSES
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JOAN PAULA MCCRACKIN
A.K.A. JOAN PAULA BARNES
6041 Rio Linda Blvd., Unit 3
Rio Linda, California 95673

Registered Nurse License No. RN 494497

Respondent.

Case No. 2004-166

OAH No. N2004020312

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on October 17, 2004.

IT IS SO ORDERED September 17, 2004.

Sandra L. Erickson

BEFORE THE
BOARD OF REGISTERED NURSES
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JOAN PAULA MCCRACKIN
A.K.A. JOAN PAULA BARNES
6041 Rio Linda Blvd., Unit 3
Rio Linda, California 95673

Registered Nurse License No. RN 494497

Respondent.

Case No. 2004-166

OAH No. N2004020312

PROPOSED DECISION

Administrative Law Judge Stephen J. Smith, Office of Administrative Hearings, State of California heard this matter in Sacramento, California on June 2, 2004.

Paul V. Bishop, Deputy Attorney General, represented the Board of Registered Nurses, Department of Consumer Affairs.

Joan Paula McCrackin appeared and was represented by William Wright, Attorney at Law.

The record was closed and the matter was submitted on June 2, 2004.

FACTUAL FINDINGS

1. Ruth Ann Terry, M.P.H., R.N., made the allegations contained in the Accusation in her official capacity only as Executive Officer of the Board of Registered Nursing ("the Board"), Department of Consumer Affairs, State of California. The Accusation was made on January 6, 2004. Joan Paula McCrackin timely filed a Notice of Defense to the Accusation. The Board has jurisdiction to revoke, suspend or impose conditions upon any license issued in the State of California to practice certified or registered nursing.¹

¹ Business and Professions Code sections 2760 and 2761.

2. The Board's official records as of November 13, 2003 show that the Board issued Joan P. McCrackin Registered Nurse License number 494497 on August 31, 1993. The license is in full force and effect and is due to expire December 31, 2004, unless renewed. There is no history of previous disciplinary action by the Board against Ms. McCrackin.

3. The parties stipulated and agreed at the commencement of the evidentiary hearing that Paragraphs 6 through 9, found on page 3 of the Accusation, are true and correct. Ms. McCrackin knowingly, intelligently and voluntarily waived her right to any further evidentiary hearing on these allegations. Ms. McCrackin's counsel joined in the waiver.

4. Ms. McCrackin was convicted on October 3, 2003 in the Superior Court, County of Placer of the crimes of violations of Health and Safety Code sections 11377(a), possession of methamphetamine, and Health and Safety Code section 11364, possession of a narcotic smoking device. The parties stipulated that these convictions were misdemeanors.

5. Ms. McCrackin was sentenced to serve three years of formal, supervised probation, the terms and conditions of which included 60 days in the County jail, payment of fines and assessments and 500 hours of community service. Ms. McCrackin was also ordered to participate in any drug or alcohol rehabilitation program ordered by her probation officer, to submit to random urine screens for the presence of drugs or alcohol, not to possess any narcotic or controlled substance without a valid prescription, and to submit herself to search and seizure by any peace officer at any time of the day or night. There is no evidence in the court records that her probation officer actually ordered Ms. McCrackin to participate in any specific drug rehabilitation program. Ms. McCrackin testified that no program was ordered. Ms. McCrackin remains on formal probation that will expire by its own terms on October 2, 2006, unless extended or terminated early.

6. There was no evidence Ms. McCrackin has completed any of her 500 hour community service obligation, or that she has paid her fines and penalties. The Judgment and Sentence Order required Ms. McCrackin to report to serve her jail term on December 17, 2003, so it is reasonable to conclude that she has successfully completed the custodial portion of her sentence.

7. The circumstances leading to Ms. McCrackin's arrest and conviction took place in August and September 1997. Ms. McCrackin was riding in a vehicle with her friend Ms. Romero and Ms. Romero's husband on September 28, 1997. Police stopped the vehicle in which all three were traveling. Ms. McCrackin's purse was searched incident to her detention and arrest. Two small melted glass smoking pipes, four baggies containing methamphetamine, one baggie containing marijuana, two small cut straws and a razor were located in her purse. Criminal proceedings against all three were prolonged because Ms. McCrackin and the other defendants challenged the legality of the stop and search of the vehicle. Due to that and additional delays, Ms. McCrackin's conviction actually occurred more than 6 years after her arrest. Ms. McCrackin testified that she decided to plead no

contest when she was informed by her defense attorney that her two co-defendants had made plea agreements and were going to testify against her.

8. Ms. McCrackin's convictions reflect conduct that has a substantial relationship to the qualifications, duties or functions of a registered nurse. Unlawful possession and use of controlled substances is prohibited for registered nurse licensees. Patients have a right, and the Board is under an obligation to assure, that registered nurses are free from illegal use, removing the potential for ever practicing while impaired.

9. Ms. McCrackin is proud of her nursing credentials and her profession of nursing. She loves her work as a nurse. She considers herself creative in her care approach and an aggressive patient advocate. She has a high commitment to delivering high quality care. She has practiced as a R.N. for Catholic Healthcare West (CHW) at Mercy General Hospital since March 1995. She has always worked primarily in the post partum and ante partum units of the Mercy Family Birth Center. She cares for both pregnant women just before delivery, women and infants just born, and for older women having obstetric and gynecological surgery. She also does a great deal of patient education. There are seven or eight nurses in her unit, and 7-8 licensed vocational nurses (LVNs). Nursing is performed in teams. The nurses, including Ms. McCrackin, serve as the charge nurses for each team.

10. Ms. McCrackin submitted her performance appraisals in evidence from 1996 through 2003 in evidence. The performance reviews reflect that her work as a nurse is uniformly good, with above average attention to quality patient care. Her nursing competence appraisals are uniformly above average. There are some problems noted in the 2002-2003 appraisals with excess unexcused absences. Ms. McCrackin explained that these were not absences but tardies, and Mercy counts excessive tardies as unexcused absences. Ms. McCrackin testified that she has never failed to show up for work when scheduled. She had to be on duty at 0645 hours, and felt badly because she had to drop her daughter off at Highlands High School well before school started in order to get to work on time. She has corrected the problem. Ms. McCrackin also had problems getting along with another nurse, reflected in the most recent two or three evaluations. That difficult employee has been transferred to another CHW facility. There was no evidence Ms. McCrackin's employer knows of the arrest, convictions or the circumstances, or of the existence of this action by the Board.

11. Ms. McCrackin also introduced Mercy Touch quality of care commendations she has received from hospital management. One she is particularly proud of, awarded in 2003, is a Mercy Touch certificate written by Sister Mary St. Michael, for her compassionate care of an indigent mother at the end of her hospital stay and discharge from the hospital. The two other Mercy Touch commendations praise Ms. McCrackin's willingness to assist other nurses and her assistance of a visiting nurse. The other 2 commendations in evidence were awarded between 2001 and 2002. Ms. McCrackin also introduced several patient letters of praise she has received from patients for her quality nursing care. Some of these patients were required to stay in the hospital for extended periods due to problems with

pregnancy or after giving birth. One of the letters particularly praised Ms. McCrackin for making the patient comfortable during her extended stay.

12. Ms. McCrackin is a regular member of LifePoint Church. She attends with several fellow nurses. She has determined to join a Christ centered recovery group forming at the church. She has not yet attended a meeting, but she is very excited about the program. The recovery group seeks to provide group help for those struggling with codependency, substance abuse or life struggles of any type. She hopes to serve as a facilitator in the group. She has not been able to attend a meeting yet because she had surgery on her foot in February 2004, and is wheelchair bound. Her cast comes off June 29, but she needs a similar surgery on her other foot. She is presently on disability.

13. Ms. McCrackin had a great deal of difficulty acknowledging her substance abuse problem in her evidentiary hearing testimony. Ms. McCrackin finally acknowledged a substance abuse problem in conjunction with her testimony about her participation in the recovery group starting at her church. Ms. McCrackin very reluctantly acknowledged in that testimony that she was recovering from a past substance abuse problem. She limited the duration of the problem to August and September of 1997, and denied any substance use or abuse after her arrest in late September 1997. She repeatedly testified that after she "fell off the path" in 1997, she is back on and will never fall off again.

14. Ms. McCrackin's explanation of her drug use in August and September 1997 and of the events leading up to her arrest was vague. She declined to furnish much detail in her answers to direct questions inquiring of the nature and extent of her methamphetamine use during this period of time, responding only that she "partied" with Ms. Romero "a few times". She testified Ms. Romero was an old high school friend who had fallen on hard times, and she associated with her largely because she felt sorry for Ms. Romero and thought she needed a friend. She expressed deep embarrassment and remorse for her conduct. She expressed particular remorse and shame for the harm and negative impact her arrest and convictions had upon her children. She repeatedly stated in her testimony that her drug use was on weekends only, and that she was very concerned not to report to work and care for patients after having used drugs.

15. Ms. McCrackin's imprecise responses in her testimony foreclosed any significant inquiry into the true nature and extent of her drug use. Her testimony was not false; just vague and sparse. She made an effort to avoid disclosing the full details of her past conduct. Ms. McCrackin appeared fearful in her testimony, and made every effort to focus her testimony on her drug free life, the quality of her nursing, her dedication to her profession, and what she has done since her arrest.

16. An investigator from the Division of Investigation acting for the Board contacted Ms. McCrackin in September 2001 to request Ms. McCrackin provide a urine sample to be tested for the presence of drugs. Ms. McCrackin reported for an interview, but declined to produce the sample until she had discussed the matter with her attorney, as the criminal proceedings were still pending in Placer County, and she did not know what to do.

The investigator agreed to postpone the giving of the sample, and arrangements were made for Ms. McCrackin to produce the sample two days hence. On the day the test was rescheduled, the investigator was pressed for time due to leaving town, and Ms. McCrackin was unable to come to provide the sample at the time requested because she said she had to run some unnamed errands. The investigator told Ms. McCrackin that another time would be arranged to provide the sample. Ms. McCrackin did not hear from the investigator again, and the investigator acknowledged in her testimony that she did not make any further request of Ms. McCrackin to furnish a sample. The Board has made no further request of Ms. McCrackin to submit to a drug test to date.

17. Ms. McCrackin is currently subject to random urinalysis as part of her criminal probation. She has been on probation for a year. Ms. McCrackin testified she has been tested by her probation officer, and the tests have been negative. There was no evidence to rebut her testimony. There is no evidence that Ms. McCrackin has refused to submit to any request by her probation officer to submit to a drug test.

18. There is no evidence in this record of any drug use or drug abuse by Ms. McCrackin other than the short period in August and September 1997 when she associated with and "partied with" the Romeros. Just after her arrest and the commencement of court proceedings, Ms. McCrackin severed all association with the Romeros, and has not seen them, except in court, since the day of the arrest. Ms. McCrackin has had the advantage of the time it took for her criminal proceedings to be finally resolved to add substance to her contentions that her drug use was short term, situational, the product of a poor association, and did not constitute an addiction. There is no evidence to rebut her contention that she has not used any drugs since her arrest. She testified that she considers herself fully recovered from her "fall off the path" in 1997.

19. Ms. McCrackin enjoys a strong support group. Her friends at church are like family, and her own family is large, local and very supportive. She is active in church affairs, and the church is active in her community. Her children are ages 18 and 21, are very supportive and close to her. Both work at good jobs. She did answer directly that if she ever felt drawn back to drug use, her family, friends at church and particular her children will furnish an excellent barrier. *She reiterated that she would never put her children through that experience again.*

20. Ms. McCrackin is partially rehabilitated. Despite her vague testimony, foreclosing much inquiry into the nature and extent of her drug use, there is little evidence that she used drugs before or after August and September 1997. As time has passed, now 7 years, that absence of evidence of drug use takes on considerable significance. This is particularly so since there is no evidence of problems with her work performance. Her nursing competency has been and continues to be excellent. Ms. McCrackin was quick to admit that she exercised exceptionally poor judgment during this short and dark period of her life. She assured the Board that she is never "going there" again.

21. A certification of the costs of investigation and enforcement of this matter incurred by the Board was made by the Deputy Attorney General under penalty of perjury and was offered in evidence.² The certification sets forth total costs incurred by the Board for the services of the Deputy Attorney General in this action of \$2,016.00 for fiscal year 2003-2004. No other costs were sought. The costs are presumed reasonable.³

LEGAL CONCLUSIONS

1. The burden of proof for all of the allegations made in this matter rests upon the Board and requires the Board to prove the allegations by "clear and convincing" evidence.⁴ Clear and convincing evidence requires a finding of high probability. Clear and convincing evidence means the proof in support of the allegations must be clear, explicit and unequivocal--so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind.⁵

2. "The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to the following:"

"..."

"(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or regulations adopted pursuant to it."

"..."

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."⁶

3. Ms. McCrackin stipulated that she has been convicted of two misdemeanors substantially related to the qualifications, functions or duties of a registered nurse licensee. She is therefore guilty of unprofessional conduct, within the meaning of sections 2761(a) and (f). Legal cause exists to revoke or suspend her license.

² Business and Professions Code section 125.3.

³ *Id.*

⁴ *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853

⁵ *In Re Marriage of Weaver* (1990) 224 Cal.App.3d 478; *In Re David C.* (1984) 152 Cal.App.3d 1189, 1208.

⁶ Business and Professions Code section 2761, in pertinent part.

4. "In addition to other acts constituting unprofessional conduct within the meaning of this chapter it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in section 4022.

(b) Use any controlled substance as defined in Division 10 (commencing with section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license..."

5. Ms. McCrackin stipulated that she possessed methamphetamine, a Schedule II controlled substance⁷ in 1997. She also acknowledged that she self-administered methamphetamine in the same period of time. Therefore, Ms. McCrackin is guilty of unprofessional conduct, within the meaning of section 2762, and 2761(a) and (d).

6. The assessment of an appropriate penalty for the violations of the Nursing Practice Act found above is a matter of balancing the circumstances in aggravation against the circumstances in mitigation and rehabilitation. The circumstances in aggravation are that Ms. McCrackin was convicted of two misdemeanor offenses, both related to abuse of a very addictive, harmful controlled substance, methamphetamine. She obtained the benefit of a plea bargain that relieved her of facing much more serious charges. Her participation in the offense was not minimal or incidental. She was not entirely forthcoming in her evidentiary hearing testimony regarding the nature and extent of her methamphetamine use.

7. There is no evidence in mitigation. Ms. McCrackin frankly acknowledges a short period of her life where she made some exceptionally poor choices and exercised exceptionally bad judgment. She expressed genuine remorse at her realization of the harm she had done to herself and her children.

8. As set forth in detail in the Factual Findings, there is significant evidence of partial rehabilitation present in the record. This evidence is sufficient to warrant the imposition of a stayed revocation of the license, and admission of Ms. McCrackin to probation. The passage of time and the complete lack of any evidence of any drug use or involvement before or after August and September 1997 lends substantial credence to Ms. McCrackin's claim that her drug use was the product of a short period of exceptionally poor judgment in part contributed to by a very poor choice of associates.

⁷ Health and Safety Code section 11305(d).

9. Particularly important to this determination is the fact that there is no evidence of any negative impact of Ms. McCrackin's "fall off the path" upon the quality of her nursing care, then or now. Her nursing skills are good and her nursing competence is rated excellent by her employer. She is performing on a criminal probation that runs through October 2006. This probation has significant behavioral controls, including the requirements that she submit to warrantless search and random drug screening. She could face a significant jail term if she uses any controlled substance. She is active in church and is joining a support and recovery group there. The concern with what appears to be a short period of exceptionally poor judgment and situational methamphetamine use can be adequately monitored through selected terms and conditions of probation. These terms and conditions adequately respond to the unanswered questions regarding the nature and extent of Ms. McCrackin's past substance abuse, and to more fully explore whether more rehabilitative efforts should be required than she has made to date. Ms. McCrackin will be examined by competent medical and mental health professionals approved by the Board to furnish independent verification of Ms. McCrackin's claims she does not suffer from any current or residual problem with drug use or abuse that might affect her competency to practice nursing safely.

9. Costs of investigation and prosecution of the action are recoverable if the Board prevails in the action.⁸ The Board has prevailed in the action. The costs of investigation and prosecution, as detailed in the Factual Findings, were not contested by Ms. McCrackin. The undersigned carefully reviewed the costs declaration of the Deputy Attorney General.⁹ The costs sought are not disproportionate to the violations alleged, and the time claimed spent is not unreasonable under the nature and circumstances of the case. The costs are reasonable and may be recovered in the amount of \$2,016.00. The costs are recoverable as part of the disciplinary Order.

ORDER

Registered Nurse License No. RN 494497, issued to Joan Paula McCrackin, also known as Joan Paula Barnes, by the Board of Registered Nursing, is REVOKED. However, the revocation is STAYED for a period of a period of three (3) years, during which time Ms. McCrackin ("respondent") shall be on probation to the Board, subject to the following terms and conditions:

SEVERABILITY

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other

⁸ Business and Professions Code section 125.3.

⁹ *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.

applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

(1) OBEY ALL LAWS

Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

If respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

(2) COMPLY WITH THE BOARD'S PROBATION PROGRAM

Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

(3) REPORT IN PERSON

Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.

(4) RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE

Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when she resides outside of California. Respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where he or she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing license during the term of probation.

(5) SUBMIT WRITTEN REPORTS

Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which she has a registered nurse license.

(6) FUNCTION AS A REGISTERED NURSE

Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

* If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

(7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS

Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to any prospective employer and immediate supervisors prior to commencement of any other employment in nursing or other health care related position.

In addition to the above, respondent shall notify the Board in writing within seventy-two (72) hours after she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after she is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

(8) SUPERVISION

Respondent shall obtain prior approval from the Board regarding respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

- (a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.
- (b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.
- (c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.
- (d) Home Health Care - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the respondent with or without respondent present.

(9) EMPLOYMENT LIMITATIONS

Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool during the period of probation, unless the Board or its designee approves otherwise in writing.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity unless the Board or its designee approves otherwise in writing.

If respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

(10) COMPLETE A NURSING COURSE

Respondent, at her own expense, shall enroll and successfully complete a course relevant to the practice of registered nursing no later than six months prior to the end of her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course. Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course. The Board shall return the original documents to respondent after photocopying them for its records. The Board may, in its discretion, waive this requirement upon presentation of evidence of training and education completed by respondent during the probationary period furnished by respondent's employer.

(11) COST RECOVERY

Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$2016.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of her good faith efforts to comply

with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

(12) PHYSICAL EXAMINATION

Within 45 days of the effective date of this decision, respondent, at her expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of the respondent's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by the respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify both the Probation Program and respondent by telephone. Respondent shall immediately cease practice and shall not resume practice until notified in writing by the Probation Monitor that she may engage in the practice of registered nursing. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required until the Probation Monitor has notified respondent that a medical determination permits respondent to resume practice.

(13) MENTAL HEALTH EXAMINATION

The respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine his/her capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board, who has experience in the diagnosis and treatment of chemical dependency and alcoholism. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of the respondent.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Probation Program and respondent of this determination by telephone, and the respondent shall immediately cease practice and may not resume practice until notified by the Probation Monitor that she may engage in the practice of registered nursing. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required, until the Probation Monitor has notified respondent that a mental health determination permits respondent to return to practice.

If the examiner discovers that the respondent is or has been dependent upon drugs or alcohol or has had problems with drugs or alcohol (i.e., drug dependence in remission or alcohol dependence in remission), then the respondent must further comply with the following additional terms and conditions of probation:

(A) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE

Respondent, at her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, respondent, within a reasonable time approved by the Board, shall be enrolled in a program. If a program is not successfully completed within a reasonable time, the Board shall consider respondent in violation of probation.

Based on Board recommendation, each week respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

(B) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS-

Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive

have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

(C) THERAPY OR COUNSELING PROGRAM

Respondent, at her expense, shall participate in an on-going counseling program until such time as the Board releases her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

(14) SUBMIT TO TESTS AND SAMPLES

Regardless of whether additional chemical dependency treatment and rehabilitation is recommended by the licensed mental health professional referred to in the Mental Health Examination Term above, respondent, at her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. Respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and respondent shall be considered in violation of probation.

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation.

(15) VIOLATION OF PROBATION

If a respondent violates the conditions of her probation, the Board after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed revocation of respondent's license, or reimpose probation under the

same or additional or other terms and conditions as the Board, in its discretion, determines appropriate under the circumstances.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

(16) LICENSE SURRENDER

During respondent's term of probation, if she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender his or her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

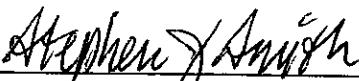
Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- (1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- (2) One year for a license surrendered for a mental or physical illness.

(17) RESTORATION UPON COMPLETION OF PROBATION

Upon successful completion of probation, respondent's license shall be fully restored.

DATED: June 18, 2004



STEPHEN J. SMITH
Administrative Law Judge
Office of Administrative Hearings

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6 Attorneys for Complainant

7
8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2004-166

13 JOAN PAULA MCCRACKIN
A.K.A. JOAN PAULA BARNES
627 Quebec Way
Rio Linda, CA 95673

A C C U S A T I O N

14 Registered Nurse License No. RN 494497

15 Respondent.

16
17
18 Complainant alleges:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
21 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
22 Department of Consumer Affairs.

23 2. On or about August 31, 1993, the Board of Registered Nursing issued
24 Registered Nurse License Number RN 494497 to Joan Paula McCrackin, a.k.a. Joan Paula
25 Barnes (Respondent). The Registered Nurse License was in full force and effect at all times
26 relevant to the charges brought herein and will expire on December 31, 2004, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2761 of the Code states in part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

...

"(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to it.

...

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

..."

5. Section 2762 of the Code states in part:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

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"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

”

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Crime)

6. Respondent is subject to disciplinary action under section 2761(f) of the Code in that she was convicted of crimes relating to the unlawful possession of controlled substances. The circumstances are as follows:

7. On or about October 3, 2003 respondent was convicted the crimes of unlawful possession of Methamphetamine, a controlled substance, in violation of section 11377(a) of the Health and Safety Code and possession of paraphernalia for smoking a controlled substance in violation of section 11364 of the Health and Safety Code.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

8. Respondent is subject to disciplinary action under section 2762(a) in that she was found in possession of Methamphetamine, a controlled substance, and drug paraphernalia within the meaning of sections 11364, 11377 and 4022 of the Health and Safety Code. The circumstances are as follows:

9. On or about September 28, 1997, the Rocklin City Police searched Respondent's purse and found her in the possession of two "small melted glass smoking pipe[s] used to ingest narcotics", four baggies containing Methamphetamine, one baggie containing marijuana, two small cut straws and a razor.

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1 PRAYER


2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License Number RN 494497,
5 issued to Joan Paula McCrackin, a.k.a. Joan Paula Barnes;

6 2. Ordering Joan Paula McCrackin to pay the Board of Registered Nursing
7 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
8 Professions Code section 125.3;

9 3. Taking such other and further action as deemed necessary and proper.

10 DATED: 1/6/04

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14 RUTH ANN TERRY, M.P.H., R.N.
15 Executive Officer
16 Board of Registered Nursing
17 Department of Consumer Affairs
18 State of California
19 Complainant

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